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SENIOR WHIP

Congress of the United States
House of Representatives
Washington, DC 20515-2003
April 29, 2003

The Honorable Tommy G. Thompson
Secretary of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201-0004

Dear Secretary Thompson:

I am writing to seek clarification of the final HIPAA privacy rule's effect on Congressional staff liaison activity.

Because nearly every Congressional office employs caseworkers who aid constituents in resolving unpaid or disputed health claims, a question has arisen regarding whether, in the absence of a signed authorization, Congressional staff can inquire of, and receive protected health information from, an insurance company on behalf of a constituent. I am requesting that you provide guidance on this matter.

One of my district office staff was recently informed that, because of the HIPAA rule, insurance company claims representatives would no longer be permitted to speak with Congressional staff to facilitate the resolution of claims until the patient had completed an authorization form naming the Congressional liaison and it had been received by the insurance company. Moreover, she was told by several insurance companies that because HHS had not provided a "model authorization" form, that the patients must use company-specific forms, rather than one that simply contains the required elements set forth by the rule.

My staff then contacted the HHS Office of Civil Rights regarding this matter. OCR staff cited Section 164.510(b)(3), which states that covered entities, when the individual is not present, may "in the exercise of professional judgment, determine whether the disclosure is in the best interest of the individual, and if so, disclose only the protected health information that is directly relevant to the person's involvement with the individual's health care." Your staffer interprets this section as applicable to the Congressional liaison situation. She advised my staff that insurance companies should be referred to this section and told that no authorization is necessary prior to the release of protected health information.

However, health plans contend that because the patients in question are not "incapacit (ated) or in an emergency circumstance," they believe that Paragraph 2 is applicable. Paragraph 2 reads as follows: "*Uses and disclosures with the individual present.* If the individual is present for, or otherwise available prior to, a use or disclosure permitted by paragraph (b)(1) of this section and has the capacity to make health care decisions, the covered entity may use or disclose the protected health information if it: (i) obtains the individual's agreement; (ii) Provides the individual with the opportunity to object to the disclosure, and the individual does not express an objection; or (iii) Reasonably infers from the circumstances, based

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(on) the exercise of professional judgment, that the individual does not object to the disclosure.”

If patients seeking Congressional office assistance are required to obtain an authorization form from their insurance company, complete it, and mail it back to the company before Congressional staff can help them with a claim—because there is no recognized universal Congressional authorization form, this process could take a month or more to complete—our ability to assist our constituents would be greatly hindered. It would be of great assistance to my staff and to many others if you would provide written clarification regarding this aspect of the rule as soon as possible.

Thank you for your prompt response to this matter. If you have questions about this request, please contact me or my Legislative Director, Priscilla Ross, at (202) 225-4016.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ben Cardin".

Benjamin L. Cardin
Member of Congress

BLC:pr